

1988

State of Utah v. James William Harris : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Brief of Appellant, *Utah v. Harris*, No. 880268 (Utah Court of Appeals, 1988).

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UTAH COURT OF APPEALS

UTAH
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OF
APPEALS

880268-CA

DOCKET NO. UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	
Plaintiff/Respondent,)	
)	Case No. 880268-CA
-vs-)	
)	
JAMES WILLIAM HARRIS,)	
)	
Defendant/Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM FINAL JUDGMENT
OF THIRD JUDICIAL DISTRICT COURT IN AND FOR TOOELE COUNTY
HONORABLE TIMOTHY R. HANSON, JUDGE

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AUTHORITY CONFERRING JURISDICTION

Section 78-2-2 Utah Code Annotated, 1953 as amended, confers upon this Court appellate jurisdiction from all District Court of this State in matters of review of final judgments.

This Appeal is taken from a jury verdict and subsequent sentencing to the Utah State Prison which occurred on the 21st day of March 1988, by the Honorable Timothy R. Hanson in an action in the Third Judicial District Court in and for Tooele County, State of Utah.

JURISDICTION AND STATEMENT OF NATURE OF PROCEEDING

Jurisdiction is conferred by Section 78-2-2 Utah Code Annotated, 1953 as amended.

Notice of Appeal was filed on the 20th day of April 1988, in the District Court Clerk's office. Tooele County, State of Utah.

This Appeal results from the sentencing conducted by Judge Hanson as a result of the trial of the Defendant James Harris. James Harris was convicted of Burglary, a 2nd degree felony; Criminal Mischief, a Class "A" misdemeanor; and Assault, a Class "B" misdemeanor; as the result of a jury trial conducted in Tooele County. These proceedings will be for the review of alleged judicial error prejudicing the rights of the Defendant, and the Appellant's allegation that the evidence is insufficient to sustain a conviction on the charges.

STATEMENT OF ISSUES PRESENT ON APPEAL

The Appellant proports the following issues are those primarily raised in this Appeal.

1. That the conviction of the Defendant for the crime charged of Criminal Mischief, a Class "A" misdemeanor, in violation of 76-6-106(1)(c) Utah Code Annotated 1953, as amended, was incapable of being supported by the evidence deduced at the time of the trial.

2. That the conviction of the Defendant for the crime charged of Burglary, a 2nd degree felony, in violation of 76-6-202 of the Utah Code Annotated 1953, as amended, was incapable of being supported by the evidence and testimony received from the witnesses by the Court at the time of trial.

3. That the Defendant's conviction for the crime charged of Assault, a Class "B" misdemeanor, in violation of 76-5-103 of the Utah Code Annotated 1953, as amended, is incapable of being supported by the evidence and testimony received by the Court from the witnesses at the time of the trial.

4. That the Court errored in not delaying the proceeding because of a medical condition impairing the capacity of the defense counsel rendering an adequate defense of the Defendant impossible under the circumstances. Denying the Defendant his right to a fair trial accordingly. Further that the Defendant was denied his right to select counsel of his own choice and to have that counsel given time to adequately prepare and render a defense in his behalf.

5. That a fair trial was rendered impossible by the actions of the Court security personnel and that judicial error occurred by the Court failing to discharge the jury and empanel a new jury before the trial proceeding. In light of the prejudicial character of the jury seeing the Defendant in handcuffs and shackles before the proceeding began and sandwiched between the bailiff and transport officer during the trial proceedings the prejudicial effects rendered a fair trial impossible.

6. That a fair trial was not possible by virtue of a conflict of interest existing between the prosecution and the Defendant.

7. That the Court erred in restricting the character of the examination by Mr. Hansen into the altercation between the Defendant and Chris Stribbe on the night in question limiting the exposure of the jury to facts both relevant and material to the proceeding and thus rendering impossible a fair trial in behalf of the Defendant.

8. That the Court erred in failing to give proper jury instructions as evidenced by the exceptions made on the record at the time of the trial prejudicing the jury and thus making it impossible for the Defendant to receive a fair trial.

9. That the record is inaccurate in that the transcript contains a blatant error.

STATEMENT OF THE CASE

A. NATURE OF THE CASE.

In this case the Defendant was charged with and subsequently

convicted of the crimes of (1) Criminal Mischief, a Class "A" misdemeanor; (2) Burglary, a 2nd degree felony; and (3) Assault, a Class "B" misdemeanor.

The State produced witnesses of two categories: (1) persons who were witnesses of the Defendant's actions and/or the scene; (2) persons who were witnesses for purposes of establishing value of items destroyed or damaged.

B. COURSE OF PROCEEDINGS

Proceedings began on October 28, 1987, with present for purposes of conducting the trial, Mark Nash in behalf of the Tooele County Attorney's office and Phil L. Hansen in behalf of the Defendant Jim Harris. together with state's witnesses and the Defendant. The proceeding that began on October 28, 1987. ended in a mistrial and Court reconvened with a jury panel on the 29th day of October 1987.

On the 29th day of October 1987. the day for the beginning of the trial, present in the Courtroom were Mark Nash, the Judge and Court personnel, Phil Hansen. the Defendant. State's witnesses and Gerald Hansen who indicated that the family of Jim Harris and the Defendant Jim Harris wished to have Mr. Gerald Hansen represent him. The matter is covered by the trial transcript for the date of October 29, 1987. in pages three thru twenty-five. It is the position of the Appellant that the Appellant was denied his choice of counsel, that a substitution of counsel was necessary because of health problems with Mr. Phil Hansen and the impression by the Appellant/Defendant that Mr. Phil Hansen had not properly prepared for the adjudication and trial of the case. The Appellant contends

that Mr. Phil Hansen was incapable of representing him because of eye problems of his own. Mr. Phil Hansen's medical condition was such that he had difficulty reading and it is the Appellant's position that it is necessary for a fair trial that defense counsel have the opportunity of being able to read material submitted to him by his opposition, by the Court, exhibits that are being presented, and submissions made by the Defendant himself by way of notes. The discussions concerning the nature of Mr. Phil Hansen's impairment are discussed on the record for the proceeding of October 28, 1987. and referred to again on October 29, 1987. at page twenty-six of the transcript of the trial. The trial did not proceed until after the issue of the representation and the capacity to represent by Phil Hansen were settled and a motion was made for the dismissal of the jury and the empaneling of a new jury in the form of a Motion for Mistrial made by Phil Hansen as a result of again improper conduct by the Court Baliff and prison transport personnel presenting Mr. Harris in shackles and chains and parading him through the Courtroom sandwiched in the words of Phil Hansen "like an oreo cookie" between the two of them before the jury prejudicing the jury and making it impossible for Mr. Hansen to acquire a fair trial. That motion was denied, the trial proceeded, witnesses called, the case concluded, instructions to the jury given. the jury directed to consider the verdict and exceptions made to the jury instructions beyond the scope of the jury.

C. DISPOSITION AT TRIAL COURT

The Defendant Jim Harris was convicted by the jury on all three

counts as charged and subsequently sentenced by the Trial Court following a Motion for a New Trial and a denial of the same.

D. RELEVANT FACTS WITH CITATIONS TO THE RECORD

At pages three thru twenty-five of the transcript of the trial of the 29th day of October 1987, the Court discusses the appearance of the attorney, Gerald Hansen and the request for a substitution of counsel and a continuation of the trial proceeding in order to allow the substitute counsel adequate opportunity to prepare and present the defense of the Appellant. The Court denied Gerald Hansen the opportunity of entering as substitute counsel and denied the Motion to continue the trial proceeding and required Phil Hansen to proceed with the case even though the Defendant was dissatisfied with the representation, the preparation and the health of defense counsel. At page twenty-six of the trial transcript for the 29th day of October 1987, the Court again refers to the eye problem of Mr. Phil Hansen recognizing that such an eye problem exists but denying the Defendant's Motion again for a substitution of counsel. The Court having made findings at that point and particularly on page twenty-seven at line twenty-four and twenty-five and continuing on page twenty-eight that "Mr. Phil Hansen was prepared and will properly, adequately and fully represent the Defendant's interest in the matter". At page twenty-eight Gerald Hansen declined the invitation of Mr. Phil Hansen to sit at counsel table and assist in light of the fact that he was unprepared and would not be capable of making an adequate representation accordingly.

Officer Niesporek began his testimony on October 29, 1987. at page seventy-four and indicated at page eighty-three of the transcript that he found the broken microwave when in fact the police incident report which is included in the addendum to this Appeal Brief, will show that Officer Niesporek had to actually return to the home a second time to be shown the broken microwave after it had been subsequently discovered by the parties even though the microwave was in an area immediately adjacent to area where the television was which is what Officer Niesporek was called to examine at the scene. No explanation is given anywhere in the trial transcript for the second visit of Officer Niesporek and no explanation is given for the microwave having been discovered as evidence by the police incident report at a time separate from the discovery of the television.

At page ninety the microwave which is an exhibit to the trial proceeding, was inquired of by defense counsel and Officer Niesporek testified that he did not think a bullet had gone through the microwave. An examination by the Court of this exhibit will clearly show that the microwave was not kicked in but was rather shot. No explanation for this inconsistency exists in the record.

Conflicting testimony exists concerning whether or not the Defendant ever touched the chief complaining witness Gaylene Grantham in that Miss Grantham indicated at page one hundred nineteen of the October 29, 1987. transcript that such happened and Kaye Gohler indicated on page one hundred sixty-eight that Jim did not touch Gaylene.

At page one hundred thirteen of the October 29, 1987, transcript it shows that the Defendant was engaging in conversation with Gaylene Grantham before Gaylene alleges that he kicked the television in and they were discussing the whereabouts of the children of Gaylene Grantham, that would tend to negate any evidence of any intent necessary to form a specific intent to do harm required for the conviction of a burglary.

Gaylene indicated at page one hundred thirty-one that the television was fixed for approximately \$300.00. And the direct examination of the owner of the property Fred Mansfield, he indicated that at page one hundred and forty of the October 29, 1987, transcript, the original cost of the door which was damaged was \$89.00 but that it was not worth fixing. On cross examination Gaylene Grantham admitted at page one hundred fifty-six of the October 29, 1987, transcript that Jim who had remained in the house to argue was in a state of extreme drunkenness having previously indicated at page one hundred forty-four of the transcript that the relationship had been one of a love affair and that he had access to the house and had a key to the house. The State terminated cross examination into the area of the fight between Chris Stribbe and Jim Harris and committed a judicial error in failing to allow Mr. Hansen to proceed with such examination. At page one hundred seventy-three Mr. Hansen was not being duplicitous in his examination and the material inquired after was both relevant and material to the assault charge as well as very possibly the burglary. At page one hundred seventy-five Gaylene Grantham indicates that the television was repaired for a cost of \$275.00.

In the transcript of October 30, 1987, Howard Yerke an expert for the State, at page nine indicated that the television would cost approximately \$260.00 to repair and at page seven indicated that the microwave had a value of approximately \$100.00 to \$150.00.

Carrie Sly's was the only testimony given concerning the incident surrounding the destruction of the fence and Carrie Sly's testimony was insufficient at page thirteen to indicate that there was any affirmative intent on the part of the Defendant to strike the fence and was inconclusive as to whether or not the fence was even struck by the Defendant driving his truck.

At page sixteen of the October 30, 1987, transcript Kay Gollaher began her testimony and suggested that on page twenty-six of her testimony that the Defendant was told "you are not wanted here and you had better leave" which is the best explanation for that which was said and clearly insufficient for sustaining a burglary conviction. At page twenty-seven Kay Gollaher indicated that she had been pushed by Jim but subsequently at page forty-six she said that "he pushed me to be pushing he just was pushing his way into the kitchen. He was violent." Not evidencing the affirmative intent characteristically required of an assault. Ms. Gollaher indicated on page twenty-eight of her testimony of the October 30, 1987, transcript that the Defendant went to hit Chris and Chris hit him but on page twenty-nine indicated that Chris had challenged Jim before their altercation which would have taken out the concept of the assault being relevant and supportive of the burglary and remove the question of intent pertaining to the assault. Judge Hanson again erred as evidenced by the October

30, 1987, transcript page forty-eight where the judge limited the line of questions about the incident surrounding Jim's fight with Chris and on page forty-nine line five the Court again limited to inquiry into the fight at which point Mr. Hansen pointed out to the Court that the issue was examined on direct and Judge Hanson indicated that no it was not, which was again in error. See lines one thru five of page thirty for the examination on direct of the very issue. (October 30, 1987, transcript)

John Gregrich was called as an expert to testify in behalf of the State and testified at page fifty-nine, October 30, 1987, transcript, that the microwave was worth about \$75.00.

At page eighty of the October 30, 1987, transcript. Jim Harris testified that he had his "stuff" at Gaylene's house and had moved a lot of what he owned there and that he stayed there every night which would again tend to indicate free and ready access to the premises and impossibility of creating a circumstance where burglary could exist.

The exceptions to the verdicts at page one hundred fifty-one, and the exceptions to the balance of the jury instructions that follow thereafter at page one hundred fifty-three are particularly important in the review of this record as well. With that the Appellant will proceed toward his summary of the argument.

SUMMARY OF ARGUMENT

The Defendant's position relative to the conviction on the three counts is that the evidence was grossly insufficient as evidenced by the transcript of the proceedings to convict the

Defendant of either a Class "A" misdemeanor Criminal Mischief, a 2nd degree felony Burglary, or a Class "B" misdemeanor Assault. A Criminal Mischief may have existed but it clearly would have been a Class "B" misdemeanor. A Burglary did not take place and there was no specific intent relative to an Assault. there was vigorous and violent behavior but no conduct or contact intended to cause harm, injury or fear of harm or injury to sustain the Assault.

By way of summary of the arguments further Defendant alleges that the Court errored in not delaying the proceeding and allowing a substitution of counsel because of the insufficiency of the preparation for the defense by counsel and because of the medical condition impairing the counsel's capacity to render an adequate defense for the Defendant, and the dissatisfaction of Defendant with the representation by Phil Hansen.

The Defendant in summary further asserts that for many reasons a fair trial was denied him including all of the those issues enumerated in the Statement of Issues including but not limited to the fact that the jury had been prejudiced as is evidenced by the record, by Court security personnel sandwiching the Defendant between them during the time of entry and exit from the courtroom by opening a door separating the Defendant from the jury and exposing the Defendant while in shackles and handcuffs to members of the jury.

That a fair trial was rendered impossible by virtue of the fact that the Defendant was being prosecuted by the Tooele County Attorney's office and that the Tooele County Attorney was the brother-in-law of the Defendant's sister and that the Defendant as

evidenced by a document included in the addendum hereto actually owned and continues to own jointly with the County Attorney Ronald Elton a vehicle described as a jeep, 1953 eight cylinder automobile.

That there were additionally errors by the Court and errors in the record to wit: that the Court erred in failing to grant Mr. Hansen on three separate occasions the opportunity of examining the altercation between the Defendant and one Chris Stribbe limiting the ability of the jury to learn the facts and the circumstances surrounding the events of the evening. And that the Court failed to give proper jury instructions in that the Court specifically gave jury instructions that gave insufficient definition of the character of the crimes for purposes of the lesser included offense on the Criminal Mischief and gave a jury instruction relative to the Burglary which failed to refer the jury to the specific intent to commit an Assault since no allegation of an additional felony or incident to support the character of the jury instruction existed.

Finally, in addition to the Defendant's argument that the Court erred in failing to give proper jury instructions the Defendant asserts that the record is inaccurate and incapable of sustaining his conviction in light of the fact that instructions to the jury and the verdict are in the middle of the two transcripts. The verdict is found at the end of the transcript of October 29, 1987. The transcript continues with the trial of October 30, 1987, after the verdict is given.

DETAIL OF THE ARGUMENT

POINT I

THE CONVICTION OF THE DEFENDANT FOR THE CRIME CHARGED OF CRIMINAL MISCHIEF, A CLASS "A" MISDEMEANOR WAS INCAPABLE OF BEING SUPPORTED BY THE EVIDENCED DEDUCED AT THE TIME OF THE TRIAL.

The evidenced deduced at the time of the trial shows that the television was repaired for \$275.00 according to the testimony given by Gaylene Grantham at page one hundred seventy-five of the October 29, 1987, transcript. The evidence given by Howard Yerke indicates that that television had a \$300.00 value and could have been repaired for \$260.00 as shown by his direct examination on pages seven and nine of the October 29, 1987, transcript. The evidence of Howard Yerke indicates that the value of the microwave was between \$100.00 and \$150.00 and the evidence of John Gregrich places the value of the microwave at \$75.00 as evidenced by page fifty-nine of the October 30, 1987, transcript. Howard Yerke and John Gregrich were experts called to testify in behalf of the State. Gaylene Grantham was the chief complaining witness and those witnesses give us the evidence of the damage we recognize from a review of the record. Fred Mansfield testified that the screen door just had the aluminum panel in the bottom portion of it kicked out and that it wasn't worth fixing and that it only cost \$89.00 new and that that was a long time ago. In order for those sums to add up to in excess of \$500.00 so that a Criminal Mischief Class "A" misdemeanor could have been found one would have to find that there was some evidence of physical damage as a result of an

intentional harm to the fence. The only testimony concerning that which happened to the fence comes from Carrie Sly a young lady who was going to babysit for Gaylene Grantham on the evening in question. Her testimony is limited in character and at page thirteen of the October 30, 1987, transcript she indicates that she saw Jim's truck driving over the fence at Gaylene's house that she could not identify who was driving the truck but that there was a man and another person in the truck and that the man wore a cowboy hat and that Jim Harris usually wore a cowboy hat. Jim Harris we recognize therefore probably drove over the fence but there is absolutely no indication that he did so maliciously, there is no allegation by Carrie Sly that he did so intentionally, only that he backed out quickly and that he drove away. On that night Jim Harris was drunk. Gaylene Grantham indicates that he was drunk, she says that he was in a state of "extreme drunkenness" at page one hundred fifty-six of the October 29, 1987, transcript. A man who is drunk and driving often has accidents and there is no reasonable basis for concluding that the harm done to the fence was intentional even if there is a presumption that Jim Harris drove the truck over the fence in question.

The Court's error in failing to give a proper jury instruction relative to the Class "A" misdemeanor Criminal Mischief and to the lesser included offenses by not defining the character of those lesser included offenses in the jury instructions given compounded the problem and in all probability confused the jury. If anything Mr. Harris could only have been convicted of a Class "B" misdemeanor because the value of the television and microwave and

the door do not add up to \$500.00 and there is no evidence of any intentional harm to the fence.

POINT II

THAT THE CONVICTION OF THE DEFENDANT OF BURGLARY A 2ND DEGREE FELONY WAS INCAPABLE OF BEING SUPPORTED BY THE EVIDENCE AND TESTIMONY RECEIVED FROM THE WITNESSES.

In order to be convicted of burglary as is pointed out capably by Phil Hansen in his closing arguments found in the October 30, 1987, transcript at page one hundred twenty-seven there has to be an actual affirmative intent. That he needed to enter into or remain in the dwelling of Gaylene Grantham with the intention of engaging in the criminal act of an assault since no felony was alleged. He had to have intended to assault someone at the time he entered into the house or had to intend to remain in the house for purposes of conducting an assault against someone to sustain the intention to engage in a crime sufficient to support the burglary charge.

The clear testimony of Gaylene Grantham and Kay Gollaher throughout the entire direct and cross examination is that there was an ongoing discussion, argument, battle between these parties during the entire evening. Jim Harris had free access to the house, he was in the house when they left, he lived in that same house that Gaylene Grantham lived in for various periods of time, for a period of time he had his clothing there according to him. Gaylene indicated that he didn't have clothing but that he did have other personal possessions there and that he had a key and

that they slept together in that house. One would be very hard pressed to find that Mr. Harris entered the house unlawfully and even if he entered or remained in that house without invitation, no burglary exists unless he intended at the time he went into that house or intended while he remained in that house to assault some person and that assault was his purpose for remaining in the house or going into the house.

The assault by Chris Stribbe and the battery by Chris Stribbe against the person of Jim Harris clearly was a confrontational thing. Jim Harris was not present in the home for purposes of confronting Kay Gollaher. Jim Harris was there to talk to Gaylene Grantham. Did Jim Harris enter or remain in the home of Gaylene Grantham with the specific intent of assaulting her? He gave no indication of such, he touched her perhaps. perhaps he did not touch her, conflicting evidence exists between Kay Gollaher's testimony and Gaylene Grantham's testimony concerning the same. He moved towards her but he didn't raise his fists at her, he didn't threaten her according to any of the witnesses. He had a disagreement that existed with her but that disagreement was insufficient for purposes of evidencing an intent to engage in some criminal act necessary to cause his entry into or remaining in the dwelling of Gaylene Grantham to constitute burglary. The evidence does not sustain a finding of a specific intent to engage in a criminal act such as an assault which is foundationally necessary to sustain a burglary.

The jury instructions given by Judge Hanson compounded the problem in that they made no attempt to inform the jury that an

actual intent to engage in this criminal act of assault at the time he entered into or during the course of the time that he remained in the dwelling had to exist in order to find Mr. Harris guilty of the burglary. That error undoubtedly resulted in the burglary conviction.

POINT III

THAT THE DEFENDANT'S CONVICTION FOR AN ASSAULT A CLASS "B" MISDEMEANOR IS INCAPABLE OF BEING SUPPORTED BY THE EVIDENCE AND TESTIMONY RECEIVED BY THE COURT FROM THE WITNESSES AT THE TIME OF TRIAL.

Mr. Harris was charged with attempting with unlawful force or violence to do bodily injury to another or exhibit a threat accompanied by a show of immediate force or violence to do bodily injury to another. The alleged assault occurred in the household of Gaylene Grantham, and in the discussion of the assault charge we have to focus upon the events that took place within the house. Mr. Harris was not there for purposes of confronting Kay Gollaher or Chris Stribbe, he was there for purposes of confronting Gaylene Grantham. Mr. Harris it is alleged, pushed Kay Gollaher but there is no indication or even allegation that there was any intention of doing bodily injury or that the shove was violent in character or that he threatened her, or that she was in fear of bodily injury or harm.

Mr. Harris had a fight with Chris Stribbe but Chris Stribbe verbally challenged Mr. Harris before their altercation and grabbed Mr. Harris before their altercation. at which time Mr. Harris took a swing at Chris Stribbe, didn't strike him and then was beaten

severely by Chris Stribbe. No evidence of any threat to Chris Stribbe, no evidence of any show of immediate force, no evidence of any force actually existing other than a swing which didn't meet after a confrontation and threat by Chris Stribbe and Chris Stribbe had grabbed him. The charge although lacking specificity clearly is directed at the potential threat to Gaylene Grantham but although there is conflicting testimony as to whether he touched her or not the touching was not alleged as being violent or having any intention of doing harm. Defendant did move towards her but there was no indication that he had raised his fist or had made any other exhibition of threat and he did not strike her and accordingly there is simply insufficient evidence to sustain a conviction for an assault. No evidence of any intent to assault exists and again the Judge compounded the problem by giving a jury instruction which did not include as evidenced by the exceptions made by Mr. Hansen, any indication that there needed to be intent to do this violence or to do bodily injury or intent to make a threat that would cause the fear of bodily injury for impending violence.

POINT IV

THE COURT ERRORED IN NOT GRANTING THE
DEFENDANT HIS COUNSEL OF CHOICE AND NOT
DELAYING THE PROCEEDING IN ORDER TO ALLOW
ADEQUATE REPRESENTATION.

It is clear from the transcript of October 29, 1987, that Mr. Harris was not represented by his counsel of choice, it is clear that Phil Hansen had an eye infection or condition which rendered

him incapable of seeing and reading well and it is clear that Gerald Hansen did not have adequate opportunity to prepare and so he could not enter the case to assist Phil Hansen. It is also clear that the Court was fully informed of these matters and chose to deny the Defendant the opportunity of a continuance in order to grant counsel either the opportunity of healing or of substituting counsel. This was reversible error. The Court wished to proceed, caused the defense to proceed and in doing so rendered the defense of the Defendant less than adequate.

POINT V

THAT A FAIR TRIAL WAS RENDERED IMPOSSIBLE BY THE ACTIONS OF THE COURT SECURITY PERSONNEL AND THAT JUDICIAL ERROR OCCURRED BY THE COURT FAILING TO DISCHARGE THE JURY AND EMPANEL A NEW JURY BEFORE THE TRIAL PROCEEDING.

It is further clear by the transcript of October 29, 1987. that the behavior of Court security personnel in exposing the Defendant to the jury in shackles and handcuffs by the opening of a door, where they were uncuffing the Defendant, separating the jury from him and then parading the Defendant back and forth in front of the jury sandwiched between the baliff and transportation officer would create an environment of suspicion and mistrust and prejudice in the eyes of the jury making it impossible for the jury to render a fair verdict in the case.

POINT VI

THAT A FAIR TRIAL WAS NOT POSSIBLE BY VIRTUE OF A CONFLICT OF INTEREST EXISTING BETWEEN THE STATE AND THE DEFENDANT.

This case was prosecuted by the Tooele County Attorney's office and the Defendant's sister was formerly married to the County Attorney's brother making them former in-laws. The breakup of that marriage was extremely adversarial, hotly contested and is still at odds to some degree. The prosecution accordingly was severely prejudiced against the Defendant and the Defendant and the County Attorney happen to also own an automobile together. This automobile was purchased during the course of the time that their brother and sister respectively were married. Evidence of the ownership of that automobile is included in the addendum to this brief and that additionally evidences a prejudice on the part of the prosecution rendering the capacity to acquire reasonable negotiation opportunity, fair charging of alleged crimes. a reasonable interpretation of the circumstances and a fair representation of the Defendant's rights impossible.

POINT VII

THAT THE COURT ERRORED IN RESTRICTING THE CHARACTER OF THE EXAMINATION BY DEFENSE COUNSEL PHIL HANSEN INTO THE ALTERCATION BETWEEN DEFENDANT AND CHRIS STRIBBE IN THE HOME OF GAYLENE GRANTHAM.

Central to the behavior of the Defendant is the behavior of the other parties surrounding the Defendant on the evening in question. The Defendant has been charged with having destroyed property, having an actual intent to do harm to others or having actually harmed others and yet the Defendant received a broken ankle and a broken jaw without any other persons having been injured. The jury

was not permitted the opportunity of having a complete examination of these facts by defense counsel because of the improper restriction by Judge Hanson of the line of questioning by defense counsel. The jury requires the opportunity of knowing of those circumstances surrounding that incident, they were both material and relevant and the failure on three separate occasions even after the issues were examined on direct examination by the prosecution in the examination of Kay Gollaher on page thirty lines one thru five of the October 30, 1987, transcript the Court still denied the opportunity of examination by the Defendant's counsel. This was reversible error. It is impossible for the jury to make a fair and complete evaluation of the circumstances without knowing those facts having only been given hints about them by the prosecution.

POINT VIII

THE COURT ERRORED IN FAILING TO GIVE PROPER JURY INSTRUCTIONS.

The Court's jury instructions are deficient as is evidenced by the exceptions made on the record by Phil Hansen at page one hundred fifty-one of the October 30, 1987, transcript. The jury instructions are deficient as to form with regards to all three counts as is specifically set forth in the transcript at pages one hundred fifty-one, one hundred fifty-two and one hundred fifty-three. Without proper jury instructions the jury could not have understood the manner in which they had the ability to find Mr. Harris guilty of a lesser included offense on the malicious mischief or not guilty on the burglary and assault charges. The

deficiency in the character of the language is critical, it was error and should not have been made.

POINT IX

ERROR OCCURS IN THAT THE TRANSCRIPT IS
ERRONEOUS OR INCOMPLETE OR BOTH.

The trial transcript proceeds through October 28th and 29th appropriately and then at the end of the day on October 29th we find instructions to the jury and jury verdicts. The October 30th transcript continues with the second day of the trial proceeding and ends with additional instructions to the jury.

The Derendant does not know what portion of the trial transcript that may have been omitted or why the confusion exists but it is obvious that the trial transcript is in error and so it denies the Defendant a fair and adequate opportunity to appeal his conviction. Accordingly the Defendant ought to be entitled to a new trial on the issues.

CONCLUSION

In conclusion the Defendant asserts that there was insufficient evidence for the conviction on all three counts. There are multiple errors by the Court and there were prejudices and improprieties which ought to cause a new trial to be granted with the verdicts having been set aside in this case. The Defendant respectfully requests that his convictions on these three counts be

set aside and that a new trial be ordered on the merits in order to grant the Defendant his proper day in Court.

RESPECTFULLY SUBMITTED this 30th day of August, 1988.

A handwritten signature in cursive script, reading "Wm B Parsons III". The signature is written in dark ink and is positioned above a horizontal line.

WILLIAM B. PARSONS III
Attorney for Defendant/Appellant

HAND DELIVERY CERTIFICATE

I do hereby certify that four (4) true and correct copies of the attached Appellant Brief was hand delivered this 30th day of August 1988, to:

Sandra Sjogren
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

Wm B Parsons

ADDENDUM

1. Police Incident Report
2. Title to Jeep jointly owned by Defendant and Ronald Elton.
Tooele County Attorney.

OELE CITY POLICE DEPARTMENT

TYPE OF INCIDENT 46 abduction		CODE 01-01	DATE OCCURRED 11-1-85	TIME 500	CASE NUMBER 55-6368
REPORT AS REPORTED Family Problems		DATE REPORTED 11-1-85	TIME 0154	DAY OF WEEK FRI	
LOCATION OCCURRED (ADDRESS) 5 E 3rd N		TIME DISPATCHED 0154	TIME ARRIVED 1056	TIME COMPLETED 0249	
REPORT RECEIVED BY MP	DISPATCHED BY MP	OFFICERS ASSIGNED Niesporck Allic Schermohr		REPORTING OFFICER Niesporck	
OFFICER INITIATED <input type="checkbox"/>	VALUE OF PROPERTY \$	OWNERS ESTIMATE <input type="checkbox"/>	DISPOSITION: ARRESTED <input type="checkbox"/>	ALCOHOL INVOLVED <input type="checkbox"/>	
INCIDENT ASSIGNED <input checked="" type="checkbox"/>		OFFICERS ESTIMATE <input type="checkbox"/>	CITATION <input type="checkbox"/>	OTHER <input checked="" type="checkbox"/>	
		OTHER <input type="checkbox"/>			

PERSONS INVOLVED				
S - SUBJECT	V - VICTIM	P - PARENT	Z - CUSTODIAN	
I - INFORMANT	W - WITNESS	(LIST BOTH PARENTS	(IF CHILD DOES	
C - COMPLAINANT	J - JUVENILE	(IF SUBJECT IS JUVENILE)	NOT LIVE AT HOME)	

CODE	NAME / SEX / DOB / AGE / CH #	RESIDENCE ADDRESS / PHONE	BUSINESS ADDRESS / PHONE
CV	GAYLENE GRANTHAM F 6-8-57	55 E 3 rd N Tooele 882-7113	
J	JESSIE GRANTHAM M 11-29-74 5	Same	
V	DUSTEN GRANTHAM M 11-26-80 14	Same	
S	JAMES HARRIS M 5-25-46	59 Glenwood Tooele 882-2020	NOV 01 1985
N	JOAN HARRIS F	Same	TOOELE COUNTY SHERIFF

ILS OF INVESTIGATION:

12 DUSTIN
~~DANNY~~ HARRIS Scie
m

13 KAY GOLLAHER #4 Millpond
F 1-30-40 Steinsbury Park 882-6986

While on patrol on 11-1-85 at 0154, I was dispatched
to Glenwood concerning a family problem.
Upon arrival I contacted the complainant. She advised
that the subject went to her house, and ran over her fence,
then went inside and tore up her house, and kicked her
victim, destroying it. (Next Page)

NAME OF WRITER <i>[Signature]</i>	ASSIGNED TO _____	REVIEWED BY _____
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COPIES TO: ☒ COUNTY ATTORNEY ☐ CITY ATTORNEY ☐ JUVENILE COURT ☐ OTHER

Co. 4
Alle City

Police Department

Case Number

85-63683-51

Page Number

II

Writer:

Niesporek

The complainant advised that witness² was baby sitting at the time.

The complainant advised that the subject has the two victims at his house, located at 54 Glenwood and would not let her take them home.

The complainant advised that witness¹ had taken the victims from 55 E 3rd N to 54 Glenwood for safe keeping while the subject was at 55 E 3rd N. ^{Refer to Kroll}

Witness³ advised the subject assaulted her, and knocked her down at 55 E 3rd N. ^{Refer to AZ for statement} She advised she would contact the City Attorney, and file charges against the subject.

Sgt. Allie, and myself tried to make contact with the subject, but he would not answer the door. Dispatched ^{DUSTIN} to make contact with the subject by telephone. The subject advised he would not talk with us, that there was nothing that couldn't wait until tomorrow.

Lt. Schurman talked to the complainant. She advised him that the victims would be safe tonight, and would wait until tomorrow to get the victims from the subject, when he was not intoxicated.

The complainant advised she would file charges against the subject.

No other action at this time.

Signature:

Niesporek

Dele City

Police Department

11-5-1

Case Number

85-6368

Page Number

III

Writer:

Niesporok

I request a copy of this report be sent to the City
Attorney, and that the subject be charged with the
following:

Criminal mischief - 11-6-4 A 1

Assault - 11-5-1 - Complaint from Victim 7 -

Interference with public servant - 11-8-9

custodial interference -

WITIN

Signature:

Niesporok

SUPPLEMENTAL REPORT

oele City

Police Department

Case Number 85-6368

Page Number 12

Writer: Niesporck

I was contacted by the complainant at 0500. She advised the subject had kicked in her microwave oven (also valued at \$500.00), her TV valued at \$700.00. The complainant advised she would contact the City Attorney to file charges against the subject.

Signature: R. [illegible]

TITLE/REGISTRATION DISPLAY

ALE-NO ----- OWNER ----- STREET ADDRESS ---
 001512 ELTON RONALD L&CURTIS L&HARRIS JAMES 59 GLENWOOD AV
 --- CITY --- ST ZIP CO DIST VALUE MICROFILM
 CELE UT 84074 23 0000 30178505919 PREV REGISTRATION
 NEWAL-DATE TYPE TITLE-NO TYPE T-DATE PAYMENT P-SAFETY ST YR PLAIN-NO
 01 86 Y 1852411 N 120683 UT 86 001512

LE DESCRIPTION: VIN UTR00326 VIN-ST-FLG
 FUS TYPE MAKE STYLE MODEL YR CYL WT FUEL DISPL NADA-KEY-YR TEAD D
 TP JEP UT RCN 53 08 00 G 022285

E INFORMATION:

----- NAME ----- STREET ADDRESS ----- CITY ----- ST ZIP

HOLDER INFORMATION:

----- NAME ----- STREET ADDRESS ----- CITY ----- ST ZIP

ITS AREA: